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HAROLD B. WILLEY,

IN

Supreme Court of the United States

OCTOBER TERM, 1953

No. 343

G. SEALS AIKEN,
Appellant,

vs.

WILLIAM RICHARDSON,
Appellee

Appeal From Supreme Court of The State of Georgia

PETITION OF G. SEALS AIKEN FOR REHEARING OF ORDER OF NOVEMBER 9, 1953, DISMISSING HIS APPEAL "FOR WANT OF SUBSTANTIAL FEDERAL QUESTION."

PETITION FOR REHEARING

G. SEALS AIKEN,
1106 First Nat'l Bank Bldg.
Atlanta, Ga.
In Propria Persona

Of Counsel:
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Atlanta, Ga.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes G. Seals Aiken, the Petitioner above named, and prays that this Court grant a rehearing of its order of November 9, 1953, dismissing his Appeal from the decision and judgment of the Supreme Court of Georgia of May 12, 1953, (*Aiken vs. Richardson*, 209 Ga. 837, 76 S. E. 2nd 393.), and that said order be reversed and jurisdiction be noted of this cause for final hearing in accordance with the Rules of this Court as requested in his Appeal and Statement as to Jurisdiction.

This Court dismissed Petitioner's Appeal "for want of substantial Federal question." Petitioner, therefore, directs particular attention to the following material facts in the Record and applicable and controlling decisions of this Court showing that his Appeal *does* present substantial Federal questions and brings the case clearly within the jurisdiction of this Court and requires a reversal of the Supreme Court of Georgia as a matter of absolute Federal Constitutional right.

Petitioner has been a member of the Bar of the State of Georgia since June 2, 1920, and of the Bar of the Supreme Court of the United States since November 25, 1935. His Appeal to this Court is from the decision of the Supreme Court of Georgia of May 12, 1953, affirming the judgment of State Superior Court Judge Moore overruling Appellant's Motion to Set Aside as Void for want of jurisdiction and as a denial of due process of law and of equal protection of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, a Penal Rule Absolute entered against him as an attorney at law and an officer of the Court in this case by the Georgia Superior Court, *without a trial and without any evidence,* and affirmed by the Court of Appeals of Georgia, *adjudging him guilty of serious and felonious crimes* charged against him in the Penal Rule instituted against him by said State Superior Court for alleged *conversion of funds or embezzlement, forgery, false swearing,* etc. The Penal Rule Absolute complained of in Petitioner's appeal was issued against him by the Georgia Superior Court for $2,189.38 and a penalty of twenty per cent per annum thereon from May 23, 1949, until paid; said penalty alone amounting at this time to approximately $1,953.25. PETITIONER WILL BE SUBJECTED TO BEING INCARCERATED IN JAIL AND DISBARRED unless he complies with said Penal Rule Absolute by paying the above stated principal sum with said twenty per cent penalty per annum thereon from May 23, 1949. IT WILL

DEPRIVE HIM OF HIS MOST PRICELESS POSSESSION—A GOOD NAME AND REPUTATION ACQUIRED BY A LIFETIME OF HONORABLE LIVING (a good name is rather to be chosen than great riches . . . Proverbs 22:1). See *Abbott vs. National Bank of Commerce of Tacoma, Washington*, 179 U. S. 409, 20 S. Ct. 153. IT WILL DEPRIVE HIM OF HIS PROFESSION AND OF HIS ONLY MEANS OF A LIVELIHOOD, TO WHICH HE HAS DEVOTED OVER 33 YEARS OF HIS LIFE WITHOUT A BLEMISH.

All of the above consequences are the direct result of the action of the Supreme Court of Georgia in affirming the order of Superior Court Judge Moore in overruling the Motion of Appellant to Set Aside as Void for want of jurisdiction and as a denial of due process of law and equal protection of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, the Penal Rule Absolute entered against him without a trial, without any evidence whatever against him, without any opportunity whatever to present any evidence in his own behalf, and without a jury.

Appellant drew in question in his said Motion to Set Aside before Judge Moore, in his Bill of Exceptions to the Supreme Court of Georgia, and in his Briefs, Motion for Rehearing, and Motion for Reconsideration in the Supreme Court of Georgia, the validity of the Georgia Statutes identified as Georgia Code Sections 24-210 and 24-206, under which said Penal Rule Absolute was entered as aforesaid without a trial, on the ground that the said Georgia Statutes are repugnant to the Fourteenth Amendment of the U. S. Constitution, as construed and applied to Appellant in this case, setting forth the particulars.

The substantial federal question presented in this ground of Appellant's Appeal is practically identical with that in-

volved in the case of *Hovey vs. Elliott*, 167 U. S. 409, 17 S. Ct. 841, (A PENAL MONEY RULE CASE LIKE THE ONE AT BAR), holding in the headnotes as follows:

> "1 . . . It is a denial of due process of law to strike out an answer, and render a decree pro confesso as a punishment for contempt.
>
> "2. A judgment pro confesso against a defendant whose answer has been stricken out under the assumed power to thus punish for contempt is void for want of jurisdiction, and may be collaterally attacked."

IT IS NOT A CASE LIKE *ZUCHT* VS. *KING*, 260 U. S. 174, 43 S. Ct. 325, INVOLVING THE POLICE POWER OF A STATE TO PROVIDE FOR COMPULSORY VACCINATION, IN WHICH THIS COURT HELD THAT THE QUESTION AS TO VALIDITY OF THE ORDINANCE THERE INVOLVED WAS NOT SUFFICIENTLY SUBSTANTIAL TO SUPPORT THE WRIT OF ERROR IN VIEW OF THE PRIOR DECISIONS OF THIS COURT THAT IT IS WITHIN THE POLICE POWER OF A STATE TO PROVIDE FOR A COMPULSORY VACCINATION.

The CASE AT BAR COMES CLEARLY WITHIN THE PROHIBITION OF THE FOURTEENTH AMENDMENT AS STATED IN *YICK WO* VS. *HOPKINS*, 118 U. S. 356, 6 S. Ct. 1064, cited in the case of *Zucht vs. King*, Supra. The construction and application of the Georgia statutes here involved (Georgia Code Sections 24-210 and 24-206) to Appellant to allow the striking of his sworn answer denying guilt and showing innocence in a Penal proceeding and adjudging him guilty of the crimes charged against him in said Penal proceeding by entering a Penal Rule Absolute against him (without a trial and without any evidence), requiring him to pay the arbitrary sum of $2,189.38 principal and twenty per cent penalty per annum

thereon from May 23, 1949, until paid, brings the said Statutes within the prohibition of the Fourteenth Amendment of the U. S. Constitution as shown by *Hovey vs. Elliott*, Supra. *Said case holds that it is a denial of due process of law in violation of the Fourteenth Amendment to strike out the answer of a defendant in a Penal Money Rule proceeding and render a decree pro confesso against him as a punishment for contempt. There are no decisions to the contrary.*

The decision appealed from in this case places Appellant in the position of holding his "means of living, or any material right essential to the enjoyment of life, at the mere will of another" (the Judge who rendered said "arbitrary edict" against him), and this is "intolerable in any country where freedom prevails, as being the essence of slavery itself." *Yick Wo vs. Hopkins,* 118 U. S. 356. In the language of said case, even if the Georgia Statutes attacked in this case could be considered as fair on their face and impartial in appliance, yet they have been applied and administered to Appellant in the particulars briefly stated above, "by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights," Appellant being thereby denied equal justice in violation of the Fourteenth Amendment.

In the case of *Yick Wo vs. Hopkins*, Supra, the Appellant was "adjudged to pay a fine of $10.00, and, in default of payment, be imprisoned in the county jail at the rate of one day for each dollar of fine until said fine should be satisfied." IN THE CASE AT BAR, THE APPELLANT HAS BEEN SUMMARILY ORDERED IN A PENAL PROCEEDING, WITHOUT A TRIAL AND WITHOUT ANY EVIDENCE, TO PAY APPELLEE THE ARBITRARY SUM OF $2,189.38 and TWENTY PER CENT PENALTY PER ANNUM THEREON FROM MAY 23, 1949 (WHICH

AMOUNTS TO OVER $4,000.00 AT THE PRESENT TIME), AND HE WILL BE INCARCERATED IN JAIL AND DISBARRED IF HE DOES NOT (OR IS UNABLE TO) COMPLY WITH SAID "ARBITRARY EDICT."

Jurisdiction of this Court on this Appeal is overwhelmingly supported by *Hovey vs. Elliott*, 167 U. S. 409; *Cooke vs. U. S.*, 267 U. S. 517, 45 S. Ct. 390; *Yick Wo vs. Hopkins*, 118 U. S. 356; *In Re: Oliver*, 333 U. S. 257; *Texas vs. White*, 10 Wall, 483; *W. & A. Railroad vs. Henderson*, 279 U. S. 639; *In Re: Long*, 40 N. E. 2nd 247; *White vs. George, Marshal, Et Al.*, 195 Ga. 465, 24 S. E. 2nd 787; *Herndon vs. Lowry*, 301 U. S. 242; *Manley vs. Georgia*, 279 U. S. 1.

Appellant also assigned error in his Appeal from the decision of the Supreme Court of Georgia of May 12, 1953, in affirming the judgment of Superior Court Judge Moore of February 6, 1953, overruling Aiken's Motion to Set Aside as Void said Penal Rule Absolute, after going behind the same and allowing evidence presented by Appellant on said Motion, because the said evidence showed positively and without contradiction that Appellant had paid Appellee immediately upon collection the exact and specified amount ($1,591.33) due him under the contract of settlement and as admitted by Appellee in his own deposition (which Appellant introduced on said hearing before Judge Moore); that all of the criminal charges made against Appellant in said penal money rule proceeding are untrue; that Appellant was not (and had not been) in contempt of court; and that there was no basis whatever for the Penal Money Rule or the Penal Rule Absolute. Appellant further assigned error on the ground that the decision of the Supreme Court of Georgia in affirming Judge Moore's ruling under said circumstances deprives Appellant, a citizen of the United States, of due process of law and of equal protection of the law in violation of Section I of the Fourteenth Amendment of the Constitution of the United States by depriving him

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of the application and benefit of the following privileges and immunities and principles of law granted to other citizens of Georgia under like circumstances and in similar situations:

(a) The principle of law laid down in the cases *Holcombe vs. Dupree*, 50 Ga. 336; *Chipman vs. Barron*, 2 Ga. 232-6; *Prescott vs. Bennett*, 50 Ga. 268; and *Wakefield vs. Moore*, 64 Ga. 268, that a contempt rule against an officer of the court is not subject to the estoppel rule and does not stand in the same category as other cases, and that a rule absolute in such a case is never res adjudicata but is ALWAYS OPEN for the purpose of investigation upon a proper motion or case made, and that the court must necessarily, in a proper case, go behind such a rule absolute or previous adjudication and examine the full and complete truth of the case and render judgment accordingly.

(b) The principle of law requiring the setting aside of the Rule Absolute in this case and the discharge of the rule after Judge Moore properly went behind said Rule Absolute and into the merits of the case and allowed the evidence introduced by Aiken showing positively and without contradiction that Aiken had paid Richardson the exact amount ($1,591.33) due him under the contract of settlement and as admitted by Richardson in his testimony in the record, and that Aiken was not and is not in contempt of court, and that there was no basis whatever for the money rule or rule absolute.

The material evidence presented by Appellant on this point on the hearing of his Motion before Superior Court Judge Moore to set aside as void the Penal Rule Absolute appears in the Record at pages 87-94. No objection whatever was made to said evidence by Appellee, and he offered no evidence.

Jurisdiction of this Court on this ground is supported by

the authorities cited under sub-paragraph (a) above and the following additional authorities:

Norris vs. Alabama, 295 U. S. 587, 55 S. Ct. 579; and
Gallegos vs. State of Nebraska, 342 U. S. 55, 72 S. Ct. 141.

THIS CASE SHOWS, FOR THE FIRST TIME IN AMERICAN HISTORY, A UNITED STATES CITIZEN (APPELLANT) HAS BEEN CONVICTED, PENALIZED, AND SENTENCED AS A FORGER, AN EMBEZZLER, A CHEAT, A SWINDLER, A PERJURER, A FALSE SWEARER, AND A SOLICITOR OF LEGAL BUSINESS, BY THE "ARBITRARY EDICT" (HOVEY VS. ELLIOTT, SUPRA) IN THE FORM OF A PENAL RULE ABSOLUTE OF ONE MAN, A JUDGE OF FULTON COUNTY, GEORGIA, SUPERIOR COURT, WITHOUT A TRIAL, WITHOUT ANY EVIDENCE, AND WITHOUT ANY LAW WHATEVER TO SUPPORT IT; the Motion to Set Aside the same being denied by Superior Court Judge Virlyn B. Moore and affirmed by six of the seven Justices of the Supreme Court of Georgia in the decision appealed from.

As expressly stated by the Chief Justice of the Supreme Court of Georgia in his order allowing this appeal, the Georgia Statutes (Georgia Code Sections 24-210 and 24-206), under which this "arbitrary edict" was issued, have been properly and timely attacked by Appellant as repugnant to the Fourteenth Amendment of the U. S. Constitution, and the decision of the Supreme Court of Georgia is necessarily in favor of their validity, thereby giving the Supreme Court of the United States jurisdiction beyond question of this Appeal on the substantial Federal Constitutional questions involved in a matter of grave and public concern.

The said Georgia Statutes, as construed and applied to Appellant, place all of his property (including his good name and reputation, his profession, and his only means of

livelihood) and liberty subject to the arbitrary will of the Presiding Judge of Fulton County Superior Court. There is nothing in all the annals of American Jurisprudence comparable to such an "arbitrary edict." The most shocking tragedy is that it was rendered in Georgia, U. S. A., and not in Georgia, U. S. S. R.; that it was rendered by a State Judge of the U. S. A. to a loyal and law-abiding U. S. citizen, and not by a Commissar in Russia to some enslaved serf or communist, and that another Judge (Moore) of Fulton County Superior Court overruled a Motion to Set it Aside and he was affirmed by six of the seven Justices of the Supreme Court of Georgia, U. S. A.

The Georgia Statutes, under which the said Penal Rule Absolute was issued and which were questioned by Petitioner as repugnant to the U. S. Constitution, created a presumption that is arbitrary and that operates to deny a fair opportunity to repel it and violates the due process clause of the Fourteenth Amendment as shown by the case of *Manley vs. State of Georgia*, 279 U. S. 1, a criminal case involving a Georgia Banking Statute, and *Western & Atlantic Railroad vs. Henderson*, 279 U. S. 639, a civil case involving a Georgia Presumption Statute against railroads.

The U. S. Supreme Court has held in *Norris vs. State of Alabama*, 295 U. S. 587, 55 S. Ct. 579, that even though a State Statute may be fair on its face, the Fourteenth Amendment affords protection against action of a state through its courts in so construing and applying such a Statute as to deprive a person of due process of law or equal protection of the law.

The decision of this Court of November 9, 1953, dismissing Petitioner's Appeal "for want of substantial Federal question," therefore, was undoubtedly rendered through inadvertence and must be reversed as further shown by the following language from the decision *In Re: Oliver*, 333 U. S. 257:

> "It is 'the law of the land' that no man's life, liberty, or property be forfeited as a punishment until there has been a charge fairly made and FAIRLY TRIED IN A PUBLIC TRIBUNAL. See Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472. THE PETITIONER WAS CONVICTED WITHOUT THAT KIND OF TRIAL."

Appellant's Brief in Opposition to the Motion to Dismiss his Appeal shows that there is no merit whatever in the contention of Appellee that, "No Federal question is presented, the Supreme Court of the State of Georgia having held as a matter of State practice that the Federal question upon which the Appellant seeks to rely was not seasonably raised and is now res adjudicata and came too late to be considered by that Court and therefore too late to afford a basis for appeal to this Court." Appellee cited no case in his Motion to Dismiss Appellant's Appeal, and no authority can be cited which supports said Motion. He did cite in his Statement Against Jurisdiction the case of *Missouri, Kansas and Texas Railway Company vs. John Sealy, Et. Al.*, 248 U. S. 363. *This case is not in point.* It involved Bills of Lading in a CIVIL case *and has no bearing whatever upon the case at bar.* On the contrary, the case of *Hovey vs. Elliott*, Supra, (relied upon by Appellant), was a Penal Money Rule case like the one at bar and held that a judgment rendered in such a case without a trial and without any evidence constituted a denial of due process of law in violation of Section I of the Fourteenth Amendment of the U. S. Constitution, was void for want of jurisdiction, and was not entitled to any respect in any judicial tribunal. The said decision is applicable and controlling here and demands that jurisdiction be noted.

There is no such rule of practice in Georgia as that contended by Appellee. The Federal questions presented by this Appeal were properly and timely raised in the manner expressly provided for in *Georgia Code Sections 110-701, 110-702, and 110-709*, by Motion to Set Aside as Void (for

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"defect not amendable which appears on the face of the record or pleadings" and for want of jurisdiction) the Penal Rule Absolute entered by State Superior Court Judge Andrews against Appellant without a trial and without any evidence. Furthermore, attention is invited to the case of *Davis, Director General of Railroads, vs. Wechsler,* 263 U. S. 22, 44 S. Ct. 13, holding that local practice will not be allowed to defeat or to put unreasonable obstacles in the way of a plain and reasonable assertion of Federal rights, and that the U. S. Supreme Court cannot accept as final the decision of a State tribunal as to what are the facts alleged to give rise to a Federal right, or to bar the assertion of it, even on local grounds.

As a matter of Record, Judge Townsend in his special concurrence in the decision of the Court of Appeals of Georgia (*Aiken vs. Richardson,* 85 Ga. App. 180, 68 S. E. 2nd 228) called attention to the attacks levied against the professional integrity of Appellant in the pleadings of Appellee and in the briefs of his counsel in this Penal proceeding in both the Superior and Appellate Courts of Georgia, and stated that in justice to Appellant, he, Judge Townsend, desired to make it clear that said attacks made upon the character of Appellant were unwarranted, and this statement was made without the evidence showing the falsity of said charges, produced by Appellant on the hearing of his later Motion to Set Aside said Void Judgment. Judge Townsend further stated in his said opinion that if the order of Judge Andrews sustaining Appellee's Motion to Strike Appellant's answer on the ground it was evasive had been the subject of review, it was his "personal opinion" that it would have been the duty of the Court to find that Judge Andrews had abused his discretion in holding the answer so evasive as to require its dismissal.

Petitioner's Statement as to Jurisdiction, his Brief in Opposition to Motion to Dismiss, and the order of the Chief

Justice of the Supreme Court of Georgia allowing this Appeal, show without question that the substantial Federal questions relied upon in this case were raised immediately and properly by Petitioner upon their occurrence; that timely and proper legal exceptions were made and urged by him to the adverse rulings thereon of each of the State Courts involved; that said exceptions have been timely and properly preserved and insisted upon throughout all this litigation and are still urged and insisted upon; and Appellant has cited the pages in the Record in this Court showing how, when, where, and in what manner the foregoing was done. They also show the said substantial Federal questions were raised, urged, insisted upon, and preserved in accordance with the procedure required by the Rules and previous decisions of this Court.

Respectfully submitted,

BEN F. SWEET,
F. L. BREEN,
Of Counsel.

G. SEALS AIKEN,
In Propria Persona

CERTIFICATE

I, G. SEALS AIKEN, Petitioner above named, do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay.

G. SEALS AIKEN

ACKNOWLEDGMENT OF SERVICE

Service of the foregoing Petition for Rehearing is hereby acknowledged and copy received.

This the ..... day of November, 1953.

.....
Counsel for William Richardson,
Appellee.

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